No. 97-106

Supreme Court, U.S.
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

MARY THOMAS and IVY THOMAS,

Petitioners,

—v.—

METROPOLITAN LIFE INSURANCE COMPANY
and DONNA POWELL-THOMAS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RESPONDENT METROPOLITAN LIFE INSURANCE COMPANY'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Of Counsel:

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QUESTIONS PRESENTED

1. Whether the question of the validity of an unsigned beneficiary designation form is an important question of federal law that should be settled by this Court.

2. Whether the District and Circuit Courts' application of the strict compliance standard required by 5 U.S.C. § 8705(a) to a situation in which a federal employee insured under the Federal Employees' Group Life Insurance Policy (the "FEGLI Policy") failed to sign a designation form in the space allotted for such a signature was proper and consistent with Congress' mandate that payment of FEGLI proceeds be made without administrative difficulty and delay.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29(6) of the Supreme Court Rules, as of December 31, 1996, Respondent Metropolitan Life Insurance Company ("MetLife") had no parent companies and, either directly or indirectly, had actual ownership (for its own account) of 10% through 99% of the outstanding voting stock* in each of the following companies:

AEW ADVISORS, INC. (55.19%)
AEW CAPITAL MANAGEMENT, INC. (55.19%)
AEW CAPITAL MANAGEMENT, L.P. (55.19%)
AEW HOTEL INVESTMENT CORPORATION (55.19%)
AEW HOTEL INVESTMENT LIMITED PARTNERSHIP (55.19%)
AEW INVESTMENT GROUP, INC. (55.19%)
AEW REAL ESTATE ADVISORS, INC. (55.19%)
AEW REAL ESTATE ADVISORS, LIMITED PARTNERSHIP (41.39%)
AEW SECURITIES, L.P. (55.19%)
ALDRICH EASTMAN GLOBAL INVESTMENT STRATEGIES, LLC (13.8%)
AURORA LIMITED PARTNERSHIP (0.002%)
BACK BAY ADVISORS, INC. (55.19%)
BACK BAY ADVISORS, L.P. (55.19%)
BBC INVESTMENT ADVISORS, INC. (55.19%)
BBC INVESTMENT ADVISORS, L.P. (55.19%)
BCOP ASSOCIATES L.P. (0.55%)
BLODGETT HOLDINGS, INC. (59.2%)
BRIGGS HOLDINGS, INC. (76.8%)
BRIGGS PLUMBING PRODUCTS, INC. (76.8%)
CAPITAL GROWTH MANAGEMENT LIMITED PARTNERSHIP (27.60%)
CHART HOUSE ENTERPRISES, INC. (17.88%)
CLOVERLEAF PROPERTIES, INC. (59.2%)

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* Does not include real estate joint ventures and partnerships of which MetLife and/or its subsidiaries is an investment partner.

COATING TECHNOLOGIES INTERNATIONAL, INC. (71.8%)
COPLEY MANAGEMENT ADVISORS, L.P. (55.19%)
COPLEY PROPERTIES COMPANY, INC. (55.19%)
COPLEY PROPERTIES COMPANY II, INC. (55.19%)
COPLEY PROPERTIES COMPANY III, INC. (55.19%)
COPLEY PUBLIC PARTNERS HOLDING, L.P. (55.19%)
COPLEY SECURITIES CORPORATION (55.19%)
COPLEY/ORCHARD INVESTORS, INC. (55.19%)
COPLEY/ORCHARD INVESTORS, L.P. (54.09%)
CREA INVESTORS/SANTA FE SPRINGS, INC. (55.19%)
CREA WESTERN INVESTORS I, INC. (55.19%)
CREA WESTERN INVESTORS, L.P. (55.19%)
CTR CORP. (55.19%)
DAN RIVER, INC. (52.8%)
ECLIPSE CLAIM SERVICES INC. (25%)
EIGHTH COPLEY CORP. (55.19%)
FIFTH COPLEY CORP. (55.19%)
FIFTH SINGLETON CORP. (55.19%)
FIRST INCOME CORP. (55.19%)
FOURTH COPLEY CORP. (55.19%)
FOURTH INCOME CORP. (55.19%)
FOURTH SINGLETON CORP. (55.19%)
FRIALATOR INTERNATIONAL, LIMITED (59.2%)
GENESIS SEGUROS GENERALES, SOCIEDAD ANONIMA DE SEGUROS Y REASEGUROS (50%)
GRAYSTONE PARTNERS, INC. (55.19%)
GRAYSTONE PARTNERS, L.P. (55.19%)
GS BLODGETT CORPORATION (59.2%)
GS BLODGETT INTERNATIONAL LTD. (59.2%)
HACO CORP. (21%)
HARRIS ASSOCIATES, INC. (55.19%)
HARRIS ASSOCIATES, L.P. (0.18%)
HARRIS ASSOCIATES SECURITIES, L.P. (55.19%)
HARRIS PARTNERS, INC. (0.18%)
HARRIS PARTNERS L.L.C. (0.18%)

INTERBROKER, CORREDURIA DE REASEGUROS, S.A. (25%)
KOLON-MET LIFE INSURANCE COMPANY (51%)
LONE STAR INDUSTRIES, INC. (17.31%)
LOOMIS, SAYLES & COMPANY, INC. (55.19%)
LOOMIS, SAYLES & COMPANY, L.P. (55.19%)
LUTHER'S BAR-B-Q', INC. (39.9%)
MAGIKITCH'N, INC. (59.2%)
MC MANAGEMENT, INC. (55.19%)
MC MANAGEMENT, L.P. (55.19%)
MECCA SOFTWARE, L.L.C. (16.67%)
MERCADIAN CAPITAL L.P. (95%)
MERCADIAN FUNDING L.P. (95%)
MET LIFE INTERNATIONAL REAL ESTATE EQUITY SHARES, INC. (18.4%)
METRIC APARTMENT CO-INVESTMENT TRUST, INC. (15.4%)
METRIC COLORADO, INC. (80%)
METRIC INSTITUTIONAL APARTMENT FUND II, L.P. (16.0%)
METROPOLITAN LLOYDS INSURANCE COMPANY OF TEXAS*
METROPOLITAN STRUCTURES (50%)
MORGUARD INVESTMENTS LIMITED (80%)
NAILITE INTERNATIONAL INC. (23%)
NEF CORPORATION (55.19%)
NEIC HOLDINGS, INC. (55.19%)
NEW ENGLAND FUNDS, L.P. (55.19%)
NEW ENGLAND FUNDS MANAGEMENT, L.P. (55.19%)
NEW ENGLAND INVESTMENT ASSOCIATES, INC. (55.19%)
NEW ENGLAND INVESTMENT COMPANIES, L.P. (55.19%)
ORIGENES AFJP S.A. (10%)
PERSEUS PARTNERS L.P. (0.002%)
PESCO PLUS, L.C. (50%)

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* Affiliate

PITCO FRIALATOR, INC. (59.2%)
PLEIADES PARTNERS L.P. (0.002%)
PUBLIC EMPLOYEES EQUITIES SERVICES COMPANY (50%)
R&T ASSET MANAGEMENT, INC. (55.19%)
REICH & TANG ASSET MANAGEMENT, INC. (55.19%)
REICH & TANG ASSET MANAGEMENT, L.P. (55.19%)
REICH & TANG DISTRIBUTORS, L.P. (55.19%)
REICH & TANG SERVICES, L.P. (55.19%)
SANTANDER MET, S.A. (50%)
SECOND INCOME CORP. (55.19%)
SEVENTH COPLEY CORP. (55.19%)
SIXTH COPLEY CORP. (55.19%)
SIXTH SINGLETON CORP. (55.19%)
SEGUROS GENESIS, S.A. (MEXICO) (24.5%)
SEGUROS GENESIS, S.A. (SPAIN) (50%)
SPA PARTNERS L.P. (0.002%)
STATE STREET RESEARCH INTERMEDIATE BOND FUND*
STATE STREET RESEARCH INTERNATIONAL FIXED INCOME FUND*
STATE STREET RESEARCH STRATEGIC PORTFOLIOS: AGGRESSIVE*
STATE STREET RESEARCH STRATEGIC PORTFOLIOS: CONSERVATIVE*
STATE STREET RESEARCH STRATEGIC PORTFOLIOS: MODERATE*
STELLAR PARTNERS L.P. (0.002%)
THIRD INCOME CORPORATION (55.19%)
THIRD SINGLETON CORPORATION (55.19%)
VAUGHAN, NELSON, SCARBOROUGH & MCCONNELL, L.P. (55.19%)
VNSM, INC. (55.19%)
WESTPEAK INVESTMENT ADVISORS, INC. (55.19%)
VESTPEAK INVESTMENT ADVISORS, L.P. (55.19%)

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* Mutual fund

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No. 97-106

MARY THOMAS and IVY THOMAS,

Petitioners,

—against—

METROPOLITAN LIFE INSURANCE COMPANY
and DONNA POWELL-THOMAS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RESPONDENT METROPOLITAN LIFE INSURANCE COMPANY'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Metropolitan Life Insurance Company ("MetLife") respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the judgment of the United States Court of Appeals For the District of Columbia Circuit.

STATEMENT OF THE CASE

This is a case in which two people are claiming the proceeds of coverage, payable under the FEGLI Policy, pursuant

to a beneficiary designation form that was not signed by the insured. Applying the strict compliance standard that has long been used to determine the validity of beneficiary designations under the FEGLI Policy, both the United States District Court For the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit ruled that the unsigned form was invalid as a designation of beneficiary.

As an employee of the District of Columbia Lottery and Charitable Games Control Board, Gerald C. Thomas (the "Insured") was covered under the FEGLI Policy, issued by MetLife to the Civil Service Commission pursuant to 5 U.S.C. §§ 8701-8716 (1996) (the Federal Employees' Group Life Insurance Act, hereinafter referred to as the "FEGLI statute" or "FEGLIA").[1] The Civil Service Commission is the predecessor of the current policyholder, the United States Office of Personnel Management ("OPM"). MetLife is responsible for the administration of claims brought under the FEGLI Policy.

The Insured died on February 2, 1994, and proceeds of his FEGLI coverage in the amount of $197,000 (the "Proceeds") became payable. After the Insured's death, MetLife reviewed the documents that were necessary to determine how the Proceeds should be disbursed in accordance with the provisions of FEGLIA and the FEGLI regulations promulgated thereunder.

Section 5 U.S.C. § 8705(a) sets forth an order of precedence which determines the order in which FEGLI proceeds are to be paid. The first in line under the order of precedence is the designated beneficiary. Section 5 U.S.C. § 8705(a) provides that, in order to be valid, a beneficiary designation must meet four requirements. The designation must be: "a [1] signed and [2] witnessed [3] writing [4] received before death

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[1] The FEGLI Policy is governed by the FEGLI statute and the regulations promulgated thereunder at 5 C.F.R. Parts 870-874 (1997).

in the employing office. . . ."[2] The same section also provides that: "For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect."

Three beneficiary designation forms were submitted by the Insured's employing agency to MetLife (Ra.1 to Ra. 3),[3] the validity of the first two of which has never been questioned. By pre-printed Designation of Beneficiary forms dated August 21, 1989 and April 7, 1993 (Ra. 3 and Ra 2, respectively), the Insured had designated his wife, plaintiff-intervenor, Donna M. Powell-Thomas, to receive 100% of the Proceeds.

The most recent of the designations, however, appears on its face to be invalid because it fails to meet one of the four requirements for validity under FEGLIA. The beneficiary designation form, dated October 13, 1993 (the "October 13, 1993 Form"), is a pre-printed OPM form, with the words "Designation of Beneficiary" printed at the top. Ra. 1.

(1) The spaces of the October 13, 1993 Form calling for employee information, beneficiary information, and the name and address of the Insured are all filled in, in block printing.

(2) The October 13, 1993 Form bears the signatures of Carolyn Osbourne and Deborah Iverson in the spaces labelled "Signature of Witness."

(3) The October 13, 1993 Form was received prior to the Insured's death by his employing agency. The spaces labelled

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[2] Similarly, the FEGLI regulations, at 5 C.F.R. § 870.902, provide:

> (a) A designation of beneficiary shall be in writing, *signed*, and witnessed by two people, and received in the employing office . . . before the death of the insured.

(emphasis added).

[3] All "Ra.___" references are to the Appendix filed by MetLife with this Brief in Opposition.

"Receiving Agency," "Date of Receipt," "Agency Signature," and "Title," are filled in with information indicating that the October 13, 1993 Form was received by Carolyn Osbourne, a Personnel Management Specialist with the D.C. Lottery Board on October 13, 1993.

(4) The October 13, 1993 Form is not signed by the Insured. The space on the October 13, 1993 Form labelled "Signature of Insured" is completely blank and nowhere else on the October 13, 1993 Form does the Insured's signature appear.

The Insured's mother, Mary Thomas, and the Insured's sister, Ivy Thomas, (hereinafter "Petitioners") were designated on the October 13, 1993 Form to receive, respectively, 35% and 65% of the Proceeds. They argue that, even though the Insured failed to place his signature in the space on the form labeled "Signature of Insured," he nevertheless signed the form by printing his name on the form and checking off the box on the form that states: "I have signed this form in the presence of two witnesses who have signed below." P. 12.[4]

The October 13, 1993 Form provides, in pertinent part:

> If this designation form is determined invalid for any reason, the next prior valid designation form will be given full force and effect.

The Insured's wife, Donna Powell-Thomas (hereinafter "Powell-Thomas"), also made a claim to the Proceeds. Arguing that the October 13, 1993 Form was invalid because it had not been signed by the Insured, she based her claim on the next prior valid designation form, the April 7, 1993 Designation Form, which named her to receive 100% of the Proceeds.

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[4] All "P.___" references made herein are to pages of the Petition for Writ of Certiorari submitted by Petitioners to this Court.

When the adverse claimants were unable to reach an agreement as to the disbursement of the Proceeds, Petitioners commenced an action in the United States District Court for the District of Columbia and, thereafter, made a motion for summary judgment. Powell-Thomas made a motion for Declaratory Judgment that was treated by the District Court as a motion for summary judgment. P. 8a, n.1.

The District Court rejected Petitioners' argument that other markings admittedly made by the Insured on the October 13, 1993 Form constituted a signature and held that, because the October 13, 1993 Form was not signed by the Insured, it did not meet the requirements of FEGLIA and was, therefore, invalid. The Court held that the Proceeds were payable to Powell-Thomas. P. 9a and 10a.

Petitioners appealed the decision of the District Court to the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals affirmed the decision of the District Court. P. 5a and 6a.

Petitioners petitioned the Court of Appeals for Rehearing and *En Banc* Consideration. Two of the three judges who had decided the case (Sentelle and Henderson, *Circuit Judges*) agreed to deny the motion for rehearing, and a panel of judges consisting of Edwards, *Chief Judge*, Wald, Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers and Tatel, *Circuit Judges* denied the suggestion for rehearing *en banc*.

REASONS THE PETITION SHOULD BE DENIED

Rule 10 of the Supreme Court permits the discretionary writ of *certiorari* to be granted "only for compelling reasons." Rule 10 further states:

> The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

> (a) a United States court of appeals has entered a decision in conflict with the decision of *another United States court of appeals* on the same *important* matter . . . or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> * * *
>
> (c) a state court or a United States court of appeals has *decided an important question of federal law* that has not been, but should be, settled by this Court, or has decided *an important federal question* in a way that conflicts with relevant decisions of this Court.

(Emphasis added.)

Petitioners have failed to demonstrate that compelling reasons for the granting of *certiorari* exist in this case or that the case involves a conflict between the decisions of two United States courts of appeal or that the case involves an important federal question calling for an exercise of this Court's supervisory power.

Furthermore, both the District Court and the Court of Appeals decided the case in a manner comporting with the plain meaning of the FEGLI statute, the applicable federal caselaw, and the underlying policy considerations with which Congress was concerned when it enacted the FEGLI statute.

A. THE QUESTION OF THE VALIDITY OF AN UNSIGNED BENEFICIARY DESIGNATION FORM IS NOT AN IMPORTANT QUESTION OF FEDERAL LAW THAT SHOULD BE SETTLED BY THIS COURT

This is a case of first impression, but *not* one of great significance as is argued by Petitioners. P. 6. While it is true that there are 2.5 million active employees of the federal

government and 1.5 million retired employees of the federal government covered under the FEGLI Policy, a very small number of those employees is affected by the kind of situation presented by the instant case. This case involves a beneficiary designation form that was filled out in the insured's own hand; two witnesses who signed the form attesting to the "fact" that the insured signed his name in front of them, even though it is clear that he did no such thing; an erroneous acceptance of the unsigned form by the insured's employing agency; and adverse claimants who have decided to fight over the Proceeds for three and a half years rather than to come to an agreement among themselves as to a reasonable split of the Proceeds. This particular set of circumstances does not occur on anything close to a regular basis and, therefore, cannot be presented reasonably as a set of circumstances that has any effect whatsoever on the vast majority of people covered under the FEGLI Policy.

Petitioners state that what is at issue in this case is "the proper method for designating beneficiaries of a Federal Government Group Life Insurance Policy," (P. 6) and seek to inflate the importance of this particular case by arguing that "millions of federal employees and retirees are entitled to guidance and clarification of the procedures utilized to carry out their intentions to change beneficiaries as their life circumstances dictate." P. 8. Contrary to what Petitioners seem to believe, the proper method for designating beneficiaries is clearly set forth in the FEGLI statute and regulations. In addition, one need only to look at the October 13, 1993 Form to see that a signature was required. And the District Court and Court of Appeals needed only to look at the October 13, 1993 Form to see that the signature requirement was not met.

Contrary to the argument made by Petitioners (at P. 8), the decisions of the District Court and the Court of Appeals did nothing to limit the right of an insured to name a beneficiary. The decisions merely re-clarified what had been clear before to everyone but Petitioners: when a FEGLI insured chooses to

use the standard beneficiary designation form, the effect of his failure to sign the form in the designated area cannot be overcome by his completion of the rest of the form in his own handwriting or by his checking off a box that indicates he has signed the form, or by the signatures of witnesses attesting to a signature that is, simply, not there.

B. THE DISTRICT AND CIRCUIT COURTS' APPLICATION OF THE STRICT COMPLIANCE STANDARD REQUIRED BY 5 U.S.C. § 8705(a) TO THE INSTANT CASE WAS PROPER AND CONSISTENT WITH CONGRESS' MANDATE THAT PAYMENT OF FEGLI PROCEEDS BE MADE WITHOUT ADMINISTRATIVE DIFFICULTY AND DELAY

The only distortion of underlying policy considerations (P. 13) has been made by Petitioners, not by either the District Court or the Court of Appeals. In pointing out that "Courts have consistently held that FEGLIA requires strict compliance with its provisions" (P. 9a), the District Court cited *Adams v. Macy*, 314 F. Supp. 399 (D. Md. 1970), which contains a detailed discussion of the policy considerations underlying Congress' 1966 amendment of 5 U.S.C. § 8705(a):

> Section 8705(a) was amended in 1966 by adding
>
> > For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.
>
> In a case decided before the amendment, a court decided that [a] designation of beneficiary in a holographic will was sufficient to entitled [sic] the designee to the life insurance proceeds. *Sears v. Austin*, 292 F.2d 690 (9th Cir. 1961).
>
> The amendment was passed for the purpose of avoiding the *Sears* result. The reason for the amendment is explained in a Senate report:

> The equities in Sears may have prompted the court of appeals to disregard the civil service regulation and the general intent of the statute in order to comply with the insured's wishes, but the precedent established in that case could, if generally followed, result in administrative difficulties for the Civil Service Commission and the insurance companies and, more important, seriously delay paying insurance benefits to survivors of Federal employees.

Id. at 400. According to the court in *Adams v. Macy*, the amendment was made by Congress:

> not to change the beneficiary designation provisions but to clarify Congress' intention that a *literal compliance with statutory procedure is absolutely necessary* in order for a federal employee to change the beneficiary of his group insurance policy.

Id. at 401 (emphasis added).[5]

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[5] Petitioners' interpretation of the purpose behind the 1966 amendment to 5 U.S.C. § 8705(a) is strained and not in keeping with Congress' own explanation. There is nothing in the amendment to suggest that it applies only to invalidate an "extraneous document not received in the employing office before an insured's death." P. 9. First, the amendment states that any designation, change or cancellation of beneficiary in a will *or other document* not so *executed* and filed is without effect. From the words themselves, it is clear the amendment deals not only with the requirement of receipt before death but also with the other requirements set forth in § 8705(a), including the requirement that the designation be signed by the insured.

Petitioners' quote from *Fair v. Moore*, 397 A.2d 976 (D.C. App. 1979) at P. 9 suggests that the 1966 amendment has been held to have been enacted solely for the purpose of requiring official receipt of a designation. Since the issue in *Fair v. Moore* was whether a designation form had been properly received prior to the death of the insured, the court naturally focused on the part of the amendment that dealt with receipt. However, as noted above, the amendment deals with more than the issue of receipt.

Congress made the requirements for a valid beneficiary designation more stringent in order to prevent administrative difficulties and delay in making payments of FEGLI proceeds. The kind of fact-finding inquiry and individual analysis Petitioners suggest is necessary in a case such as this one would result in serious administrative difficulties and delay. Petitioners' line of reasoning and that of the Court in *Metropolitan* v. *Grant*, Case Number 96-136-CIV-OC-10 (P.13-15 and P. 17a-25a) suggests that, in every case in which a pre-printed form has been filled in but not signed by the insured, it will be necessary to (1) conduct a fact-finding inquiry to ascertain whether *any* of the marks on the form were placed there by the insured and (2) analyze the making of those other marks on the form to determine whether, in that particular case, the common sense definition of "signature" can somehow be stretched to include those other marks.

If this Court adopts the theory espoused by Petitioners and the *Grant* Court about the analysis necessary in a case such as this one, insurance companies ultimately will be forced to litigate every case involving an insured who has, himself, chosen to use a particular form on which to designate a beneficiary and then has failed to sign that form in the place clearly labelled for such purpose.

One has only to examine the course of proceedings in the instant case to conclude that litigating this sort of matter causes serious delays in payment of FEGLI proceeds. It has already been more than three and a half years since the Insured's death, and still the Proceeds cannot be paid out.

Petitioners argue that "due process necessitates that [the Petitioners] have an opportunity to demonstrate the [Insured]'s purpose and intent in preparing the [October 13, 1993 Form]" (P. 11) and complain that "the decisions of the District Court and the Court of Appeals in this case were delivered without the parties having the opportunity for face to face discourse." (P.15.) These are odd arguments consid-

ering Petitioners themselves indicated, by making a motion for summary judgment in the District Court, that the case did not involve questions of fact. The only reason they argue now that there are questions of fact to be determined is that the District Court, while agreeing that the case was ripe for summary judgment, did not rule in favor of *their* motion for summary judgment, finding Powell-Thomas's summary judgment arguments more compelling.

The Court of Appeals has already addressed Petitioners' incorrect construction of that Court's holding as an implication that Petitioners were entitled to a trial. P. 7. In its Order denying Petitioners' petition for rehearing, the Court of Appeals stated:

> The court wishes to clarify, however, that although it may appear from the judgment filed February 24, 1997, that the court weighed the evidence and decided the disputed issue, this court affirmed the judgment of the district court because the evidence proffered in the summary judgment pleadings failed to demonstrate the existence of sufficient evidence from which a reasonable jury could conclude by a preponderance that the insured in this case intended to sign the contested form merely by printing his name in the informational entries. Appellant would have had the burden at trial of establishing that fact . . . Further, "[t]he [Supreme] Court has said that summary judgment should be granted where the evidence is such that it would require a directed verdict for the moving party." This is such a case. The court thus determined that there are no genuinely disputed issues of material fact.

(Citations omitted.) P. 1a and 2a.

Petitioners argue that the decisions of the District Court and the Court of Appeals do not contain an analysis of the relevant law interpreting the words "signed" or "signature." The cases cited by Petitioners as relevant at P. 10 and 11-12 were

cited by Petitioners in their memorandum to the Court of Appeals, though, so they were before that Court when it made its decision. It is not surprising that the decisions of both Courts omitted any discussion of the cases cited by Petitioners at P. 10 and11-12 as they are all significantly distinguishable from the case at bar.

U.S. v. Wexler, 657 F. Supp. 966 (E.D. Pa. 1987), *rev'd on other grounds*, 838 F.2d 88 (3rd Cir. 1988)(cited at P. 11-12) involved the question of validity of a *stamped signature* of a Department of Motor Vehicles official on vehicle registration certificates issued by the DMV. *Carna v. Bessemer Cement Co.*, 558 F. Supp. 706 (W.D. Pa. 1983)(cited at P. 12) involved bills of lading containing, similar to the October 13, 1993 Form, a space labeled "Signature of Consignor." Unlike the instant case, where the signature space was left completely blank, the signature space on the form in *Carna* contained the printed name of the Consignor, which the court properly held to be a signature.

State v. Schell, 224 N.E.2d 49 (Ind. 1967) (cited at P.12) involved a hyper-technical argument, rejected by the court, that the failure of a grand jury indictment to have the words "a true bill" written in the handwriting, rather than the printing, of the grand jury foreman rendered an indictment defective.

Plemens v. Didde-Glaser, Inc., 224 A.2d 464 (Md. 1966) (cited at P. 12) involved the question of whether the signature of the president of a company on a financing statement bound that company to the terms and conditions set forth on the statement. *Plemens* is clearly distinguishable from the case at bar since, in the opinion itself, the court states: "Nor is this a case of the lack of a typed, printed, stamped, or written 'signature' of the secured party or the debtor." *Id.* at 467.

Ex parte Cardoza, 109 A. 93 (Md. 1919)(cited at P. 10) involved a *handwritten* will, rather than a pre-printed form on

which there was a space clearly allocated for the testator's signature.

In re Estate of Hall, 328 F. Supp. 1305 (D.D.C. 1971), *aff'd*, 466 F.2d 340 (D.C. Cir. 1972)(cited at P. 10) is closer, factually, to the instant case than any of the other cases cited by Petitioners. *Hall* involved the question of whether a will that was missing the last page, upon which the testator had placed her signature, could nevertheless be considered valid on the basis of the fact that the testator had written her name at the top of the first page of the will in the following manner: "I, Francesca Ross Hall, . . ." Like Petitioners herein, the plaintiffs in the *Hall* case argued that the testator meant to be bound by her "signature" at the beginning of the will, even though that signature merely identified the testator as maker of the document. The court in *Hall* refused to accept the first signature as a valid testamentary signature because it was clear from the testimony of the witnesses that the signature on the last (missing) page of the will was the one that actually authenticated the document.

Similarly, the District Court in the instant case refused to accept Petitioners' argument that the Insured signed the October 13, 1993 Form by printing his name in a place on the form that clearly and simply called for a printed or typed identification of the Insured, while failing to sign his name in a place on the form that clearly called for his signature.

Reidy v. Almich, 418 P.2d 390 (Ariz. Ct. App. 1966) (cited at P. 10) involved a bank account signature card, used to establish a totten trust account, that was signed in the appropriate place on one side but not signed on the reverse side. The reverse side contained the actual trust agreement. Holding that a totten trust account had been established properly, the court noted that, according to the employee of the bank who had accepted the signature card, it was not customary, at the time the transaction took place, for the reverse side of the signature card to be completed. In addition, the court noted

that the face of the "signature card specifically adopted by reference the trust agreement on the reverse side thereof." *Id.* at 393.

Petitioners' reliance on *Reidy* is flawed for a very important reason. Unlike the situation presented in *Reidy*, the evidence before the District Court in the instant matter demonstrated that, although the unsigned October 13, 1993 Form was received by the Insured's employing agency, such receipt was *not* in keeping with the government's policies and procedures and was, in fact, a mistake.

The District Court had before it the affidavit of Carolyn V. Osbourne who signed the October 13, 1993 Form not only as a witness but also as a representative of the receiving employing agency. In her affidavit, Ms. Osbourne states: "There is a box on the form with the notation 'Signature of Insured.' I did not notice at that time that Mr. Thomas did not sign his name in that box. It was only after his death that I became aware that the box had not been filled in." The clear implication of this sworn statement is that, had Ms. Osbourne noticed that the Insured had not signed the October 13, 1993 Form, she would *not* have accepted it as a validly completed form.[6]

Not one of the cases relied upon by Petitioners involved the situation or question presented by the case at bar - whether, on a pre-printed form, the printing of a name in the space calling for the name to be printed can be considered a signature when the space calling for the name to be signed has been left completely blank. And not one of the cases relied upon by Petitioners dealt with the situation presented herein—the

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[6] Petitioners claim that "[t]he two (2) witnesses believed the form had been signed, as evidenced by the Affidavits submitted with Petitioner's Motion for Summary Judgment and Request for Hearing in the District Court." P. 12. That statement is patently untrue. Nowhere in the affidavits of the "witnesses" do they state that they believed the form had been signed. On the contrary, both state that they did not realize until after his death that the Insured had failed to sign his name in the signature box on the October 13, 1993 Form.

absence of a signature on a form identical to previous forms that were signed by the Insured, in the space allotted for that purpose, in the following manner: full name, hand-written, in cursive.

CONCLUSION

This case does not present a question of federal law affecting all federal employees and retirees. It presents a question, already adequately determined by the District Court and the Court of Appeals in accordance with well-settled law, that affects a small number of federal employees and retirees who are not careful enough to fill out forms properly.

Both the District Court and the Court of Appeals recognized that Congress' mandate that 5 U.S.C. § 8705(a) be strictly complied with demands the satisfaction of each and every one of the four statutory requirements for validity of a beneficiary designation—not just some of those requirements. Both Courts also recognized that neither the Insured's printing of information where printing was called for nor the erroneous acceptance by the government of the October 13, 1993 Form could transform the unsigned form into a signed form.

In making their decisions, both the District Court and the Court of Appeals acted in accordance with Congress' mandate and the *applicable* federal law regarding the issue of strict compliance, and both Courts kept in mind Congress' underlying policy considerations of preventing administrative difficulties and delay in making payments of FEGLI proceeds. For all of the foregoing reasons, the Petition should be denied.

Dated: New York, New York
August 18, 1997

Respectfully submitted,

ALVIN PASTERNAK
Attorney for Respondent
Metropolitan Life
Insurance Company
One Madison Avenue
New York, New York 10010
(212) 578-3735

Of Counsel:

SHERRY S. LAIRD

APPENDIX

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FEGLI
Federal Employees Group Life Insurance

DESIGNATION OF BENEFICIARY
Federal Employees' Group Life Insurance Program

Form Approved
OMB No. 3206-0136 Expires 6/30/90

WARNING
Read instructions on back of duplicate before filling in this form

INFORMATION CONCERNING THE INSURED:

Name (Last, First, Middle)	Date of Birth (Month, Day, Year)	Social Security Number
THOMAS GERALD CHARLES JR	04-05-57	577-76-3937

Place an "X" in the appropriate box below:

	An employee		Retired or an applicant for retirement		Receiving OWCP benefits or an applicant for OWCP benefits
X					

If you are retired or receiving Federal Employees' Compensation, give your "CSA", "CSI", or OWCP claim number.

Department or agency in which presently employed *(If retired, former department or agency)*:

Department or Agency	Bureau	Division	Location (City, State and ZIP Code)
DC LOTTERY BOARD		PROCUREMENT	2101 MLKING AVE SE WASH DC 20020

I, the individual identified above, canceling any and all previous Designations of Beneficiary under the Federal Employees' Group Life Insurance Program heretofore made by me, do now designate the beneficiary or beneficiaries named below to receive any amount of LIFE INSURANCE and ACCIDENTAL DEATH INSURANCE due and payable at my death.
I understand that this Designation of Beneficiary will remain in full force and effect, with respect to any amount payable, unless or until canceled by me in writing, or until such time as it is automatically canceled (see regulation "I" on reverse side of duplicate copy). If this designation form is determined invalid for any reason, the next prior valid designation form will be given full force and effect. If no such prior form exists, the proceeds will be distributed according to the Order of Precedence.

INFORMATION CONCERNING THE BENEFICIARY OR BENEFICIARIES *(See Examples of Designations)*:

Type or Print First Name, Middle Initial, and Last Name of Each Beneficiary	Type or Print Address (Including ZIP Code) of Each Beneficiary	Relationship	Share to Be Paid to Each Beneficiary
MARY M. THOMAS	5830 EASTERN AVE NE WASH. DC 20011	MOTHER	35%
IVY DOTSON	SAME	SISTER	65%

For each type of insurance (Basic Life, Option A—Standard, and Option B—Additional): (1) I hereby direct, unless otherwise indicated above, that if more than one beneficiary is named, the share of any beneficiary who may predecease me or become disqualified for any reason from receiving a share of the benefits shall be distributed equally among the surviving beneficiaries, or entirely to the survivor; (2) I understand that this Designation of Beneficiary shall be void if none of the designated beneficiaries is living at the time of my death.

I hereby specifically reserve the right to cancel or change this designation of beneficiary at any time without knowledge or consent of the beneficiary.

PRINT OR TYPE NAME AND ADDRESS (Including ZIP Code) OF INSURED

GERALD C. THOMAS JR
5830 EASTERN AVE NE
WASHINGTON DC 20011

Date of Execution (Month, Day, Year)
10-13-93

Please check:

- ☑ I have signed this form in the presence of the two witnesses who have signed below.
- ☑ Neither witness is named as a beneficiary.
- ☑ If I designated shares to be paid to more than one beneficiary, the shares add up to 100%. (Dollar amounts are not acceptable.)

Signature of Insured

WITNESSES TO SIGNATURE *(A witness is ineligible to receive payment as a beneficiary)*:

Signature of Witness	Number and Street	City, State and ZIP Code
Carolyn L. Osborne	2101 M.L. King Jr. Ave S.E.	Wash D.C. 20020
Signature of Witness	Number and Street	City, State and ZIP Code
Deborah P. Iverson	2101 MLK Jr Ave SE	Wash DC 20020

Receiving Agency	Date of Receipt	Agency Signature	Title
D.C. Lottery Board	10-13-93	Carolyn L. Osborne	Personnel Mgmt Spec.

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BEST AVAILABLE COPY

FEGLI
Federal Employees Group Life Insurance

DESIGNATION OF BENEFICIARY
Federal Employees' Group Life Insurance Program

Form Approved
OMB No. 3206-0136 Expires 6/30/90

WARNING
Read instructions on back of duplicate before filling in this form

INFORMATION CONCERNING THE INSURED:

Name (Last, First, Middle)	Date of Birth (Month, Day, Year)	Social Security Number
THOMAS GERALD CHARLES JR	04-05-57	577-78-3937

Place an "X" in the appropriate box below:

X	An employee		Retired or an applicant for retirement		Receiving OWCP benefits or an applicant for OWCP benefits

If you are retired or receiving Federal Employees' Compensation, give your "CSA", "CSI", or OWCP claim number.

Department or agency in which presently employed *(If retired, former department or agency)*:

Department or Agency	Bureau	Division	Location (City, State and ZIP Code)
DC LOTTERY BOARD		ADMINISTRATION DIVISION	WASH. DC 20020 2101 MARTIN LUTHER KING AVE SE

I, the individual identified above, canceling any and all previous Designations of Beneficiary under the Federal Employees' Group Life Insurance Program heretofore made by me, do now designate the beneficiary or beneficiaries named below to receive any amount of LIFE INSURANCE and ACCIDENTAL DEATH INSURANCE due and payable at my death.
I understand that this Designation of Beneficiary will remain in full force and effect, with respect to any amount payable, unless or until canceled by me in writing, or until such time as it is automatically canceled (see regulation "f" on reverse side of duplicate copy). If this designation form is determined invalid for any reason, the next prior valid designation form will be given full force and effect. If no such prior form exists, the proceeds will be distributed according to the Order of Precedence.

INFORMATION CONCERNING THE BENEFICIARY OR BENEFICIARIES *(See Examples of Designations)*:

Type or Print First Name, Middle Initial, and Last Name of Each Beneficiary	Type or Print Address *(Including ZIP Code)* of Each Beneficiary	Relationship	Share to Be Paid to Each Beneficiary
DONNA M POWELL-THOMAS	11417 CEDAR LN BELTSVILLE MD 20705	WIFE	100%

For each type of insurance (Basic Life, Option A—Standard, and Option B—Additional): (1) I hereby direct, unless otherwise indicated above, that if more than one beneficiary is named, the share of any beneficiary who may predecease me or become disqualified for any reason from receiving a share of the benefits shall be distributed equally among the surviving beneficiaries, or entirely to the survivor; (2) I understand that this Designation of Beneficiary shall be void if none of the designated beneficiaries is living at the time of my death.

I hereby specifically reserve the right to cancel or change this designation of beneficiary at any time without knowledge or consent of the beneficiary.

PRINT OR TYPE NAME AND ADDRESS *(Including ZIP Code)* OF INSURED

GERALD CHARLES THOMAS JR
11417 CEDAR LN
BELTSVILLE MD 20705

Please check:

- [X] I have signed this form in the presence of the two witnesses who have signed below.
- [ ] Neither witness is named as a beneficiary.
- [ ] If I designated shares to be paid to more than one beneficiary, the shares add up to 100%. (Dollar amounts are not acceptable.)

Date of Execution *(Month, Day, Year)*: 04-07-93

Signature of Insured: Gerald Charles Thomas Jr.

WITNESSES TO SIGNATURE *(A witness is ineligible to receive payment as a beneficiary)*:

Signature of Witness	Number and Street	City, State and ZIP Code
Gloria A Cantey	218 P ST. NW	Washington DC 20001
Ida L Crosson	514 Varnum St. NW	WASH. DC 20011

Receiving Agency	Date of Receipt	Agency Signature	Title
D.C. Lottery Board	04/07/93	Carolyn G. Bourne	Personnel Mgmt. Spec.

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1-50-800-000

FEGLI
Federal Employees Group Life Insurance

DESIGNATION OF BENEFICIARY
Federal Employees' Group Life Insurance Program

Form Approved
OMB No. 3206-0136 Expires 6/30/90

WARNING
Read instructions on back of duplicate before filling in this form

INFORMATION CONCERNING THE INSURED:

Name (Last, First, Middle)	Date of Birth (Month, Day, Year)	Social Security Number
THOMAS GERALD CHARLES JR	04-05-57	577-78-3937

Place an "X" in the appropriate box below:

						If you are retired or receiving Federal Employees' Compensation, give your "CSA", "CSI", or OWCP claim number.
X	An employee		Retired or an applicant for retirement		Receiving OWCP benefits or an applicant for OWCP benefits	

Department or agency in which presently employed *(If retired, former department or agency)*:

Department or Agency	Bureau	Division	Location (City, State and ZIP Code)
DC LOTTERY	DC GOVT	ADMINISTRATION	WASH. DC 2001 2101 MLK AVE SE 20020

I, the individual identified above, canceling any and all previous Designations of Beneficiary under the Federal Employees' Group Life Insurance Program heretofore made by me, do now designate the beneficiary or beneficiaries named below to receive any amount of LIFE INSURANCE and ACCIDENTAL DEATH INSURANCE due and payable at my death.
I understand that this Designation of Beneficiary will remain in full force and effect, with respect to any amount payable, unless or until canceled by me in writing, or until such time as it is automatically canceled (see regulation "I" on reverse side of duplicate copy). If this designation form is determined invalid for any reason, the next prior valid designation form will be given full force and effect. If no such prior form exists, the proceeds will be distributed according to the Order of Precedence.

INFORMATION CONCERNING THE BENEFICIARY OR BENEFICIARIES *(See Examples of Designations)*:

Type or Print First Name, Middle Initial, and Last Name of Each Beneficiary	Type or Print Address *(Including ZIP Code)* of Each Beneficiary	Relationship	Share to Be Paid to Each Beneficiary
DONNA MARIA POWELL-THOMAS	221 PEABODY ST NW, WASH. DC 20001	WIFE	ALL (100%)

For each type of insurance (Basic Life, Option A—Standard, and Option B—Additional): (1) I hereby direct, unless otherwise indicated above, that if more than one beneficiary is named, the share of any beneficiary who may predecease me or become disqualified for any reason from receiving a share of the benefits shall be distributed equally among the surviving beneficiaries, or entirely to the survivor; (2) I understand that this Designation of Beneficiary shall be void if none of the designated beneficiaries is living at the time of my death.

I hereby specifically reserve the right to cancel or change this designation of beneficiary at any time without knowledge or consent of the beneficiary.

PRINT OR TYPE NAME AND ADDRESS *(Including ZIP Code)* OF INSURED

Please check:

- [x] I have signed this form in the presence of the two witnesses who have signed below.
- [x] Neither witness is named as a beneficiary.
- [ ] If I designated shares to be paid to more than one beneficiary, the shares add up to 100%. (Dollar amounts are not acceptable.)

Date of Execution *(Month, Day, Year)*	Signature of Insured
8/21/89	Gerald Charles Thomas Jr.

WITNESSES TO SIGNATURE *(A witness is ineligible to receive payment as a beneficiary)*:

Signature of Witness	Number and Street	City, State and ZIP Code
Thomas Conley	2101 MLK Jr. Ave SE	Washington D.C. 20020
Agnes V. Brown	2101 MLK Jr. Ave. S.E.	Washington, D.C. 20020

Receiving Agency	Date of Receipt	Agency Signature	Title
D.C. Lottery Board	08-22-8	Gerald D. Perry	Employee Relations Spec.

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